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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/023,447
Filing Date: December 17, 2001
Appellant(s): KUISMA ET AL.

MAILED

DEC 11 2006

Technology Center 2100

Geza C. Ziegler, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02 May 2006 appealing from the
Office action mailed 02 November 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

"3rd Generation Partnership Project; Technical Specification Group Terminals; Multimedia Messaging Service (MMS); Functional Description; Stage 2 (3G TS 123.140 version 1.0.0)"; December 1999.

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Zahariev (U.S. 6,035,104); Issued: 07 March 2000.

Skladman et al. (U.S. 6,400,810 B1); Issued: 04 June 2002.

Short et al. (U.S. 6,130,892); Issued: 10 October 2000.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 7-10, 12, and 14-15 rejected under 35 U.S.C. 102(a) as being anticipated by "3rd Generation Partnership Project; Technical Specification Group Terminals; Multimedia Messaging Service (MMS); Functional Description; Stage 2, (3G TS 123.140 version 1.0.0)" hereinafter referred to as 3GPP in view of Zahariev (U.S. 6,035,104).

a. As per claims 1, 9, 10, 12, and 14-15, 3GPP teaches: transmitting a first message wirelessly from the terminal to the multimedia messaging centre, the first message requesting the multimedia messaging centre to transmit a notification message to the terminal on multimedia messages addressed to the terminal which have arrived at the multimedia messaging centre and on which the terminal has not received a notification message yet (section 8.3.3 on page 17, Figure 11 on page 19, and paragraphs 1-2 on page 20 under Annex A).

3GPP does not explicitly teach: wherein said first message comprises an option to define a selection criterion so as to limit information to be sent in response to said

first message. However, Zahariev discloses: "The here-presented system provides an ability to selectively filter information based on e-mail, and to notify a subscriber of availability of such selected information, giving the subscriber an option to have the message forwarded either by e-mail or fax to a specific location," (line 64 of column 3 through line 1 of column 4). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to have the first message comprise an option to define a selection criterion so as to limit information to be sent in response to said first message. "Once a message is received that matches the criteria, the subscriber will receive a page that could look like: MsgID=1234, Filter1. The subscriber then can call the Auto Attendant and identify himself with Customer ID and password, upon which he will be prompted to enter the message ID. Next he can select means of delivery, like e-mail or fax, and then enter numbers or addresses, or select one of a limited set of preprogrammed numbers or addresses," (lines 8-14 of column 4 in Zahariev). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to have the first message comprise an option to define a selection criterion so as to limit information to be sent in response to said first message in the system as taught by 3GPP.

b. As per claim 3, 3GPP teaches: receiving the first message transmitted by the terminal at the multimedia messaging centre; determining at the multimedia messaging centre whether there are multimedia messages addressed to the terminal at the multimedia messaging centre on which the terminal has not received a notification message yet; transmitting a second message from the multimedia messaging centre to

the terminal in response to the first message, the second message containing the notification messages on said multimedia messages on which the terminal has not received a notification message yet (section 8.3.3 on page 17, Figure 11 on page 19, and paragraphs 1-2 on page 20 under Annex A).

c. As per claim 4, 3GPP teaches: receiving the second message at the terminal, which has been transmitted by the multimedia messaging service and contains said notification messages (Figure 11 on page 19 and paragraph 2 on page 20 under Annex A); transmitting a third message from the terminal to the multimedia messaging centre in response to said second message, the third message indicating to the multimedia messaging centre the terminal's desire to fetch the multimedia message on which a notification message was transmitted to the terminal in said second message (Figure 12 on page 20 and paragraph 3 on page 20 under Annex A).

d. As per claim 5, 3GPP teaches: receiving the third message transmitted by the terminal at the multimedia messaging centre; transmitting a fourth message from the multimedia messaging centre to the terminal in response to said third message, the fourth message containing the multimedia message which the terminal desires to fetch as indicated in said third message (Figure 12 on page 20 and paragraph 3 on page 20).

e. As per claim 7, 3GPP teaches: it is determined at the multimedia messaging centre whether the multimedia messaging centre has multimedia messages addressed to the terminal for which the terminal has not received a notification message by investigating whether the multimedia messaging centre has received an

acknowledgement to the notification message from the terminal (Figure 12 on page 20 and paragraph 3 on page 20 under Annex A).

f. As per claim 8, 3GPP teaches: means for receiving a first message transmitted by the terminal, the first message requesting the multimedia messaging centre to transmit a notification message to the terminal for multimedia messages addressed to the terminal that have arrived at the multimedia messaging centre and for which the terminal has not received a notification message yet (section 8.3.3 on page 17, Figure 11 on page 19, and paragraphs 1-2 on page 20 under Annex A); and means for determining whether there are multimedia messages addressed to the terminal at the multimedia messaging centre for which the terminal has not received a notification message yet (paragraphs 1-2 on page 23 and Figure 17 on page 23).

3. Claims 2, 11, 13, and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over 3GPP and Zahariev as applied to claims 1 and 8 above, in view of Skladman et al. (U.S. 6,400,810 B1) hereinafter referred to as Skladman.

a. As per claims 2, 13, and 16, 3GPP does not explicitly teach: the first message requests the multimedia messaging center to transmit a notification message to the terminal for multimedia messages, addressed to the terminal, that have arrived at the multimedia messaging center and for which the terminal has not received a notification message transmitted from the multimedia messaging center. However, Skladman discloses: "When used in conjunction with an e-mail service, a notification service provides a messaging system that quickly and conveniently notifies subscribers

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of received e-mail messages without requiring the subscribers to remain at their computers. Upon receiving notification, subscribers can access the e-mail system at their discretion to review any new e-mail messages," (lines 42-48 of column 1). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to have the first message request the multimedia messaging center to transmit a notification message to the terminal for multimedia messages, addressed to the terminal, that have arrived at the multimedia messaging center and for which the terminal has not received a notification message transmitted from the multimedia messaging center. "To facilitate timely and convenient notification of incoming e-mail messages, an e-mail system can operate in conjunction with a notification system. A notification system is a computer-based communication system that can transfer messages to a subscriber, notifying him/her of particular events, such as the receipt of new e-mail messages," (lines 27-32 of column 1 in Skladman). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to have the first message request the multimedia messaging center to transmit a notification message to the terminal for multimedia messages, addressed to the terminal, that have arrived at the multimedia messaging center and for which the terminal has not received a notification message transmitted from the multimedia messaging center in the system as taught by 3GPP and Zahariev.

b. As per claim 11, 3GPP does not explicitly teach: wherein the selection criterion defines that notification messages for only those multimedia messages for which a notification message has not been successfully transmitted are requested.

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However, Skladman discloses: "When used in conjunction with an e-mail service, a notification service provides a messaging system that quickly and conveniently notifies subscribers of received e-mail messages without requiring the subscribers to remain at their computers. Upon receiving notification, subscribers can access the e-mail system at their discretion to review any new e-mail messages," (lines 42-48 of column 1). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to have the selection criterion define notification messages for only those multimedia messages for which a notification message has not been successfully transmitted are requested. "To facilitate timely and convenient notification of incoming e-mail messages, an e-mail system can operate in conjunction with a notification system. A notification system is a computer-based communication system that can transfer messages to a subscriber, notifying him/her of particular events, such as the receipt of new e-mail messages," (lines 27-32 of column 1 in Skladman). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to have the selection criterion define notification messages for only those multimedia messages for which a notification message has not been successfully transmitted are requested in the system as taught by 3GPP and Zahariev.

4. Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over 3GPP and Zahariev.

Claim 17 contains similar limitations as those in claims 1 and 2 and is rejected under the same rationale.

5. Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over 3GPP and Zahariev as applied to claim 5 above, in view of Short et al. (U.S. 6,130,892) hereinafter referred to as Short.

As per claim 6, 3GPP fails to teach: the terminal and the multimedia messaging centre comprise a protocol stack and a multimedia application on top of it, and said first, second, third and fourth messages are transmitted at the level of the multimedia application, the messages then being independent of the implementation of the protocol stack below the multimedia application. However, Short discloses: "The translation of the packets is done not just at the physical, link, or network layer of the protocol stack but at the transport and application layers as well. This allows the network card, protocol stack, and application running on the host computer to be independent of the network environment and configuration," (line 64 of column 3 through line 2 of column 2).

It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to have the terminal and the multimedia messaging centre comprise a protocol stack and a multimedia application on top of it, and said first, second, third and fourth message are transmitted at the level of the multimedia application, the messages then being independent of the implementation of the protocol stack below the multimedia application. "As an example of the communication device independence, the translation allows soft handoff, increased throughput, and fault tolerance by supporting multiple communication substrates. In addition, the nomadic router translation ability provides a flexible process for deploying enhanced nomadic

and mobile computing software and services such as filtering of packets and determining which packets should be allowed to be transmitted between the mobile computer and the nomadic router or local area network (Internal Firewall)," (lines 3-12 in column 4 of Short). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to have the terminal and the multimedia messaging centre comprise a protocol stack and a multimedia application on top of it, and said first, second, third and fourth message are transmitted at the level of the multimedia application, the messages then being independent of the implementation of the protocol stack below the multimedia application in the system as taught by 3GPP.

(10) Response to Argument

Appellant argues – Regarding claim 1, 3GPP does not disclose the defined query as claimed.

In response to the above argument, the examiner points out that 3GPP was not relied upon for the rejection of this limitation. The defined query is taught in Zahariev on line 64 of column 3 through line 1 of column 4 which disclose: "The here-presented system provides an ability to selectively filter information based on e-mail, and to notify a subscriber of availability of such selected information, giving the subscriber an option to have the message forwarded either by e-mail or fax to a specific location." Hence, the claimed "defined query" has been interpreted as being a functional equivalent to the teaching of selectively filtering information. It is also well known in the art at the time of the appellant's invention that email clients such as

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Eudora allow the user to periodically check for new emails when the client is not set up for automatic message retrieval.

Appellant argues – Regarding claim 1, 3GPP does not differentiate between notifications the terminal has already received and those it has not received and therefore fails to disclose requesting a notification message for multimedia messages that have arrived at the multimedia messaging centre and for which the terminal has not received a notification message yet.

In response to the above argument, the cited portions of 3GPP describe retrieving the multimedia message notifications from the MMS relay and then allowing the user to retrieve the messages. The method of claim 1 contains the open transitional phrase “comprising” which does not limit the claim to only messages that have arrived at the messaging centre and for which the terminal has not yet received notification for.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., differentiating between notifications the terminal has already received and those it has not received) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is clear that the terminal will retrieve the notifications for messages it has not yet received because section 8.3.3 of 3GPP states that **all** of the notifications will be retrieved.

Appellant argues – Regarding claim 1, Zahariev does not include an option to define a selection criterion so as to limit information to be sent in response to the first message.

In addition to the above arguments, Zahariev was cited as disclosing: "The here-presented system provides an ability to selectively filter information based on e-mail, and to notify a subscriber of availability of such selected information, giving the subscriber an option to have the message forwarded either by e-mail or fax to a specific location," (line 64 of column 3 through line 1 of column 4)." It is clear that the ability to selectively filter information is functionally equivalent to defining a selection criterion so as to limit information to be sent in response to the first message. The filter limits which messages are transmitted to the terminal and which messages are not.

Appellant's argument regarding claim 1 particularly, that email is not the same as the claimed term "multimedia messaging" or that the claimed term "MMS" is not the same as email or that the claimed term "multimedia messaging center" is not the same as a basic email server, and Appellant's interpretation of the claimed terminology and the dictionary definitions (i.e. Webopedia Computer Dictionary) presented as extrinsic source have been fully considered.

However, it is respectfully noted that the detailed description of the invention is a dictionary for the claims and should provide clear support or antecedent basis for all

terms used in the claims. See 37 CFR 1.75, MPEP § 608.01(i), § 608.01(o), and §1302.01.

Reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.); *ACTV, Inc. v. The Walt Disney Company*, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir. 2003)

Since no definition for the claimed term “multimedia messages” has been presented in the above mentioned extrinsic source nor in the invention’s specification, the term has been given its broadest reasonable interpretation and take on the ordinary and customary meaning attributed to it by those of ordinary skill in the art; thus, the term “multimedia messages” was held to encompass messages, both email and other messages as well.

Since no explicit or controlling definition for the term “multimedia messages” was given in the specification, this term should be given its ordinary meaning and broadest reasonable interpretation; the term should not be limited to exclude emails as argued, nor there is no suggestion/description in the inventions specification that the definition applied to “multimedia message” as claimed should exclude email messages.

Specifically, the invention’s written description has been reviewed for definitions that may control the meaning of the claimed argued claimed terms, namely, “multimedia message”, “multimedia messaging centre” and “multimedia messaging system”.

Relative portions of the invention’s disclosure which describe these claimed terms are:

Specifically, "multimedia message" means a video clip, an audio clip, text, or a combination of these (lines 11-12 of page 1 of the specification); the "multimedia messaging centre" is arranged to receive multimedia messages addressed to the terminal and transmit a notification message to the terminal to inform it of a multimedia message addressed to the terminal which has arrived at the multimedia messaging centre (line 35 of page 2 through line 2 of page 3 of the specification) and the "multimedia messaging system" comprises a terminal and a multimedia messaging centre, which are arranged to communicate with each other at least partially wirelessly (lines 33-35 of page 2 of the specification).

Portions of the specification cited above do not clearly set forth a controlling definition for the claimed terms "multimedia message", "multimedia messaging centre", and "multimedia messaging system" *with reasonable clarity, deliberateness, and precision*. Claimed terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1136 (Fed. Cir. 2003). An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning. See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) and *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996). (see MPEP 2106). An inventor may define

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specific terms used to describe invention, but must do so “*with reasonable clarity, deliberateness, and precision*” and, if done, must “set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning (see MPEP 2111.01(III)). However, in absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.

Hence, the claimed terms “multimedia message”, “multimedia messaging centre”, and “multimedia messaging system” has been applied the broadest reasonable interpretation in light of the specification. “Multimedia message” has been interpreted to be any message which contains text, video, audio, or other content. “Multimedia messaging centre” has been interpreted as a central message server capable of receiving messages and notifying the recipient of their arrival at the server. “Multimedia messaging system” has been interpreted as at least a central server to notify terminals of the receipt of messages at the server and terminals that receive the notifications from the central server.

Additionally, Appellant argues – Regarding claim 1, Zahariev is merely sending a notification about an email that has already been received and delivered to the users primary email address.

In response to the above arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413,

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208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The description in Zahariev on line 64 of column 3 through line 14 of column 4 clearly teaches selection criterion (i.e. *the ability to selectively filter information*) which limits information to be sent in response to the first message. The exemplary description on lines 1-14 of column 4 additionally describes a system in which the user is notified of receipt of an email that contains a document. The user is only concerned with the text of the email, so the user notifies the message center of this.

Additionally, Appellant argues – Regarding claim 1, the passages of Zahariev cited do not relate to requesting a multimedia center to send notification on messages, whose notification have not already been sent/received.

In response to the above arguments, the examiner points out that Zahariev was cited in the rejection to incorporate the option to define a selection criterion so as to limit information to be sent in response to said first message. Motivation for this has been shown above.

The examiner suggests amending the claim if a narrower meaning is intended for any and all of these terms.

Appellant argues – Regarding claim 1, MMS is not the same as email.

In response to the above argument, the examiner reminds the appellant that the 3GPP and not the Zahariev reference was used for rejecting the concept of “multimedia messages.” The MMS concept is taught by 3GPP, which clearly discloses and describes the MMS system, which has been interpreted as at least a central server

to notify terminals of the receipt of messages at the server and terminals that receive the notifications from the central server. Zahariev, includes "an option to define a selection criterion so as to limit information to be sent in response to the first message," as explained above. While the appellant additionally argues that e-mails do not display images, text, and sound in a predetermined order as a single integrated message and rather provide media files to a user as separate attachments, the examiner points out that email is given only as an example in Zahariev. The examiner points out that pictures, sounds, text, and other multimedia may be embedded in emails and are not necessarily attached as files (i.e. "attachments"). The Webopedia definition of "multimedia" is irrelevant because, while the appellant may be their own lexicographer, the term in question is not "multimedia," but rather "multimedia message." Additionally, "displaying images, text, and sound in a predetermined order as a single integrated message" is not required by the claims. In general, the claims are extremely broad and can be interpreted as such. The prior art is considered relevant and their combination motivated because the cited references are from the same field of endeavor. The combination of the two references produces a functional equivalent of the instant application.

Claims 2-7, 11-14, and 16 depend from claims 8, 9, 15, and 17 and are unpatentable at least by reason of their respective dependencies.

Appellant argues – Regarding claim 1, neither 3GPP nor Zahariev provide any suggestion or motivation to be combined.

In response to the above arguments, it should be clear that motivation to combine Zahariev with 3GPP is to allow the user to selectively filter information and to notify the user of availability of such selected information. The user can select the means of delivery for the message (see line 63 of column 3 through line 14 of column 4 in Zahariev). Additionally, the prior art is considered relevant and their combination motivated because the cited references are from the same field of endeavor.

Appellant argues – Regarding claim 1, a multimedia messaging center is not the same as a basic email server. Interpretation of the claimed terms was addressed above on page 15. The specification of the instant application was searched and this argument is unfounded. The specification discloses no such comparison.

Appellant argues – Regarding claim 1, 3GPP is not concerned with the problem of failure of sending or receiving multimedia notifications.

In response to the above arguments, this generalized statement is addressed above in the specific arguments presented by the examiner. Applicant admits that 3GPP relates to multimedia messaging services (line 13 of page 15 in appeal brief filed 02 May 2006).

Additionally, In response to appellant's argument that the 3GPP reference is nonanalogous art because it does not include defining a selection criterion, it is

respectfully noted that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, the invention's field of endeavor is transmitting a notification message to the terminal to inform it of a multimedia message addressed to the terminal which has arrived at the multimedia messaging center (see line 36 of page 2 through line 2 of page 3 of the specification). The 3GPP reference's field of endeavor is multimedia messaging system in general. Specifically, the 3GPP reference describes the MMS systems and their capabilities including the transmission of notification messages to inform the terminal of messages at the MMS (see sections 8.3.2 and 8.3.4 of MMS on pages 16 and 17 respectively).

Thus, the 3GPP reference constitutes analogous art because it is in the field of appellant's invention field of endeavor.

Appellant argues – Regarding claim 1, 3GPP and Zahariev are not analogous art.

In response to appellant's argument that the Zahariev reference is nonanalogous art because it is concerned only with e-mail and not multimedia messaging, it is respectfully noted that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to

the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, the invention's field of endeavor is transmitting a notification message to the terminal to inform it of a multimedia message addressed to the terminal which has arrived at the multimedia messaging center (see line 36 of page 2 through line 2 of page 3 of the specification). The Zahariev reference's field of endeavor is receiving a page that has been intercepted regarding a message received at the mail server and sending notification and a request to allow the user to specify where the message should be sent (see lines 61-66 of column 1 in Zahariev).

Thus, the Zahariev reference constitutes analogous art because it is in the field of appellant's invention field of endeavor.

Appellant argues – Regarding claim 7, neither 3GPP nor Zahariev teach investigating whether the multimedia messaging center has received an acknowledgement to the notification message from the terminal.

In response to the above arguments, the description under Figure 12 on page 20 of 3GPP *clearly* teaches this limitation. It is written, "Then the MM is sent to the terminal and the terminal acknowledge the delivery," (paragraph 3 on page 20 of 3GPP). The axiom of acknowledgements is for verification purposes, thereby necessitating "investigating" receipt of the acknowledgement.

(11) Related Proceeding(s) Appendix

No decision rendered by a court of the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Beatriz Prieto
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July 18, 2006

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